



Dan & Sara Rametta  
Richard Sommerville  
Citizens For Sanity.Com, Inc.  
Save Our Serenova  
& The Commenters Group  
19840 State Road 54  
Lutz, Fl. 33558  
813-949-4628  
[ramettadan@hotmail.com](mailto:ramettadan@hotmail.com)

11/21/2018

Permit Application Number SAJ-2011-00551 (IP-TEH)

Formerly: SAJ-1998-2682 (IP-MN); Ridge Road Extension (RRE)

Joshua R. Holmes,  
Principal Assistant District Counsel for Regulatory  
Office of Counsel  
Jacksonville District  
U.S. Army Corps of Engineers  
701 San Marco Blvd.  
Jacksonville, FL 32207-8175

Christina Storz,  
Assistant District Counsel  
Office of Counsel,

Jacksonville District  
U.S. Army Corps of Engineers  
701 San Marco Blvd.  
Jacksonville, FL 32207-8175

Dear Mr. Holmes and Ms. Storz,

Please put this Comment # 23 into the Administrative Record.

There is a particular reason why this Comment # 23 is being addressed to the two Army Corps attorneys above. It is also designed to be read by a member of the federal judiciary, and/or his or her judicial clerks, during any future hearing should a legal challenge become necessary. It is important to us that the federal judiciary be made aware of the fact that we attempted to inform the Jacksonville ACOE Office of Counsel of the below recent federal court ruling and its implications for the Ridge Road Extension (RRE) application.

**Introduction.**

In an attempt to give some closure to the over twenty year old proposed Ridge Road Extension (RRE) Mod 7 CWA 404(c) permit application, that to date has never received a final decision, the below Comment # 23 will show the apparent impossibility of any wetlands fill permit ever being granted due to the fact the Jacksonville District has blatantly violated, over a period of almost two years, the Army Corps' Standard Operating Procedures (SOP).

In a recent 08/13/2018 Orlando District Federal Court ruling cited below, which went in favor of the Army Corps and against the Sierra Club, Federal District Judge Paul G. Byron stated that if a federal agency

“... has promulgated regulations and procedures for implementing a statutory scheme, the agency must “scrupulously follow” those regulations and procedures.”

And

“An agency decision issued without adherence to its own regulations must be overturned as arbitrary and capricious.”

This short Comment # 23 will provide proof that such a violation of the Army Corps' Standard Operating Procedures (SOP) by the Jacksonville District Regulatory Division involving the proposed RRE has been occurring for almost two years. As such, no granting of a CWA 404(c) permit for the RRE, which most certainly will be challenged in federal court, can be upheld no matter how much of the usual deference is shown by that court to Army Corps' decisions. As stated by Judge Byron above, it “...must be overturned as arbitrary and capricious.”

**Part A—Evidence of submission by the applicants to the ACOE of information that goes against the ACOE's SOP.**

Below is one example of the monthly status reports submitted to the Jacksonville ACOE by Dawson & Associates, one of Pasco County's subconsultants.

An example of the blatant violation of the ACOE's SOP is contained below in the April 2018 monthly status report sent by Dawson & Associates to the Jacksonville Regulatory Office. They expect the ACOE to violate its own Standard Operating Procedures for the Regulatory Program by accepting, in their own words, for almost 2 years:

**“Partially completed studies and reports” and**  
**“periodic reports” and**  
**“the incremental submittal of information...”**

A typical example of a monthly status report is excerpted below and found on page 159 at:

[ HYPERLINK "<https://fl-pascocounty2.civicplus.com/ArchiveCenter/ViewFile/Item/5975>" ]

PASCO COUNTY FLORIDA, May 3, 2018, Mr. Shayne Hayes, Section Chief Pensacola Permits Section, US Army Corps Engineers, Jacksonville District, 41 North Jefferson Street, Suite 301 Pensacola, FL 32502  
Re: SAJ-2011-00551 (SP-TSH)

Subject: April 2018 Project Status Report

Dear Mr. Hayes:

**Partially completed studies and reports** are routinely forwarded to USACE for its review and feedback to help ensure final submittals are fully responsive to the RAI. USACE acknowledges that the standard 45-day deadline contained in the RAI is not relevant in this case, and that the co-applicants are demonstrating suitable progress toward completing the information requested in the RAI through these **periodic reports**, conference call discussions, **and the incremental submittal of information** that is outlined in the RAI. Progress continues for engineering and environmental activities.

**The ACOE'S SOP which they have violated.**

The reference below attests to the fact that the continual acceptance of such “partial” information, especially after a 45-day RAI response time limit turns into over 18 months, allows a project to become “unmanageable.” This is precisely what has happened to this RRE project. It has prevented a final decision and allowed the ACOE review to go on ad infinitum.

[ HYPERLINK "<https://www.nap.edu/read/10134/chapter/18>" ]

## Appendix G

### Army Corps of Engineers Standard Operating Procedures for the Regulatory Program

Page 251

#### 11. Permit Evaluation/Public Hearings.

However, if necessary, advise the applicant that if the required information is not provided, the Corps will withdraw the permit application. **Do not allow projects to become unmanageable by accepting a series of partial responses.** The Corps must have sufficient information to make and substantiate a decision on the permit application.

#### **COMMENT:**

The allowance of such an “unmanageable” situation has resulted in:

- 1) Year after year of delays in making a final decision.
- 2) The creation of false hopes, among Pasco County decision makers, that results in additional Pasco County taxpayer funding, referred to as “change orders,” being appropriated to pay for consultants. The last two change orders were for \$4.5 million and \$2.4 million respectively.
- 3) The recent determination by the Army Corps that the applicant’s preferred Mod 7 alternative was the “preliminary” LEDPA has recently been nullified by the applicant in an 09/2018 new Public Notice (PN). That PN is a modification of a modification (the Mod 7). It added seven new intersections to a previous limited access roadway across an over 4-mile Phase 2 segment of the RRE. The preferred Mod 7 alternative has now, as a result of that modification, become one of the “most” environmentally damaging “impracticable” alternatives of the 17 alternatives being considered. The resultant additional direct and indirect impacts (yet to be assessed) to an over 19 square mile area (the ‘action area’ as defined by the applicant in the 09/2018 PN) on which there previously was only one median access point to a 35-acre mixed-use commercial parcel to be bounded by a conservation easement that restricts access from that parcel. The current Pasco County Long range Transportation Plan (LRTP) indicates two no-access bridges on Phase 2 and not seven full on/off intersections. As a result, the preferred Mod 7 contains elements that are not on Pasco’s LRTP and cannot therefore be approved by the Florida Division of Transportation’s FDOT) Florida Turnpike Enterprise (FTE) which owns the Suncoast Parkway. The FTE was planning to construct an interchange at the intersection with the

proposed RRE. That is no longer possible because of the applicants' removal of the Mod 7 from the Phase 2 from Pasco's LRTP.

4) The "unmanageable" situation referred to in the above ACOE's SOP was created due to the ACOE's acceptance of "partial" information submitted by applicants. It also allows for the continual disregard of the important value of the required public comment. It is egregious for the ACOE to expect that the public keep abreast of, and continue to research and comment to, a permit application review which has gone on now for over 20 years, with no end in sight.

**THE RECENT 08/13/2018 ORLANDO FEDERAL COURT DECISION:**

The case excerpted below was recently adjudicated in Orlando, Florida on August 13, 2018. The Army Corps of Engineers prevailed against the Sierra Club. The federal judge, Judge Paul G. Byron, wrote below that even though the Administrative Procedures Act (APA) employs a "standard" that "...is exceedingly deferential [to the agency's decision]", the federal agency must "scrupulously" follow their SOP and their guidelines:

**"Nevertheless, where an agency has promulgated regulations and procedures for implementing a statutory scheme, the agency must "scrupulously follow" those regulations and procedures."**

And he continues:

**"An agency decision issued without adherence to its own regulations must be overturned as arbitrary and capricious."**

[ HYPERLINK

"[https://www.mitchellwilliamslaw.com/webfiles/Sierra%20Club%20v\\_%20St\\_%20Johns%20River.pdf](https://www.mitchellwilliamslaw.com/webfiles/Sierra%20Club%20v_%20St_%20Johns%20River.pdf)" ]

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

SIERRA CLUB, INC.,  
Plaintiff,  
v. Case No: 6:14-cv-1877-Orl-40GJK

**DONE AND ORDERED** in Orlando, Florida, on August 13, 2018.

District Judge Paul G. Byron

## **B. Agency Review**

An agency's decision-making authority is subject to review under the Administrative Procedures Act ("**APA**"). 5 U.S.C. § 706. Under the APA, the Court must set aside agency actions that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *Sierra Club v. Van Antwerp*, 526 F.3d 1353, 1360 (11th Cir. 2008) (quoting 5 U.S.C. § 706(2)(A)). This standard does not require the agency to have taken the best or most reasonable action and does not permit the district court to review the agency's action with the benefit of hindsight. *Druid Hills Civic Ass'n v. Fed. Highway Admin.*, 772 F.2d 700, 708–09 (11th Cir. 1985). Rather, the agency's action need only be a rational one that it selected by following its established decision-making procedure. See *id.* "This standard is exceedingly deferential [to the agency's decision]." *Van Antwerp*, 526 F.3d at 1360. **Nevertheless, where an agency has promulgated regulations and procedures for implementing a statutory scheme, the agency must "scrupulously follow" those regulations and procedures. *Sierra Club v. Martin*, 168 F.3d 1, 4 (11th Cir. 1999). An agency decision issued without adherence to its own regulations must be overturned as arbitrary and capricious. *Sierra Club v. U.S. Army Corps of Eng'rs*, 464 F. Supp. 2d 1171, 1183 (M.D. Fla. 2006), *aff'd*, 508 F.3d 1332 (11th Cir. 2007) (per curiam).**

Pasco County's consultants, Dawson & Associates, have asked the Army Corps' Jacksonville District's Regulatory Division, over and over in almost two years of monthly status reports, to openly violate the ACOE's own SOP. And the Jacksonville ACOE has been complicit in willingly accepting those "partially completed reports," resulting in the very "unmanageable" situation that the RRE Mod 7 has become.

Any federal circuit court judge or appellate judge, who is appraised of this fact in a future legal challenge, will likely be astounded that the ACOE has so blatantly disregarded their own SOP.

In case anyone reading this Comment # 23 is wondering exactly why Pasco County has not been able to respond to some of the requirements in the ACOE May 11, 2017 RAI, and has only been able to submit "partial" responses to the ACOE's May 11, 2017, the reasons are many and have been discussed in Comment # 22. Suffice it to say, the ACOE has requested 11 items from the applicant and Pasco has been unable to respond to some of those items due to their inability to receive any cooperation from the two property owners of the 6,500-acre ranchlands, Lennar Homes (Len-Angeline) and the Bexley family for the past 14 months. The RAI that the ACOE gave to Pasco indicated they had 45 days to respond. Time extensions are common in such RAI's, but from 45 days to now 14 months, and to an application that is almost 21 years old?

## **Conclusion.**

This Comment # 23 has been concerned with just one example of an ACOE violation of their own Guidelines, SOP and regulations. There are others that must wait for presentation in a federal judiciary setting. It is up to the ACOE's Office of Counsel to determine if their agency can successfully defend a granting of this permit application in federal court. Should a granting of this permit application eventually occur, it is highly likely that any potential legal defense would suffer from the same consequences that the actual application has suffered from for almost 21 years, namely, unmanageability.

Respectfully submitted,

Dan & Sara Rametta  
Richard Sommerville  
Save Our Serenova  
Citizens For Sanity.Com,Inc.  
& The Commenters Group

cc: Brigadier General Diana M. Holland, Commander, South Atlantic Division  
Colonel Andrew D. Kelly, District Commander, Jacksonville District  
Shawn Zinszer, Chief, Regulatory Division  
Clif Payne, Chief, Special Projects and Enforcement Branch  
Shayne Hayes, Project Manager  
Cynthia F. Van Der Wiele, Ph.D, USEPA, Region 4  
Tony Daly-Crews, USFWS